IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1528 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
KUSUMBEN JASHVANTRAY ACHARYA D/O JASHVANTRAY ACHARYA & 5 - Respondent(s)

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Appearance :
MR LR POOJARI, AGP for Appellant
MR DC SEJPAL for Respondent(s)-Claimant(s)

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 23/11/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. The instant Appeal filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, is directed against the judgment and award dated April 25, 2005, rendered by the learned Joint Civil Judge (S.D.), Dhrangadhra, in Land Reference Case No.20 of 2000, by which, the original claimant was been awarded amount of compensation at the rate of Rs.29/- per sq.mt. as well as Rs.35,000/- as compensation towards tube-well, Rs.60,000/- towards compensation of the farm house, and severance charges at the rate of 33% on the amount of compensation found payable for Survey No.1632 admeasuring 1 Hectare, 83 Are and 22 sq.mts. situated at village Halvad, Taluka: Halvad, District: Surendranagar, which was acquired for the public purpose of construction of Canal under the Narmada Project.

2. Survey No.1632 of village Halvad, Taluka: Halvad, District, Surendranagar, belonged to Jasvantray Morarjibhai Acharya. The respondents

are the heirs of deceased Jasvantray Morarjibhai Acharya. The Executive Engineer, Narmada Project (Canal) Surendranagar, proposed to the State Government to acquire the land belonging to deceased as well as lands of others for the public purpose of construction of Canal under the Narmada Project. On consideration of the said proposal, the State Government was satisfied that the lands of the deceased and others were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued which was published in the official gazette on September 14, 1993. The original owner of the land and others were thereafter served with notices under Section 4 of the Act. They objected the proposed acquisition. After considering their objections, a report under Section 5A(2) of the Act was sent by the Special Land Acquisition Officer to the State Government. On consideration of the said report, the State Government was satisfied that the lands of the deceased and others were needed for the public purpose of construction of Canal under the Narmada Project. Therefore,

a declaration under Section 6 of the Act was made which was published in the official gazette on April 5, 1995. The deceased and other land owners were thereafter served with notices for determination of compensation payable to them for acquisition of their lands. They appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.65/- per sq.mt. for irrigated lands and Rs.60/- per sq.mt. for non-irrigated lands. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated April 17, 1997, offered compensation to the deceased and others at the rate of Rs.2.85 ps. per sq.mt. for irrigated lands and Rs.1.90 ps. per sq.mt. for non-irrigated lands. The claimants, including the deceased, were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for determination of just amount of compensation payable to them. Accordingly,

References were made to the District Court, Surendranagar. The Reference made at the instance of the deceased was registered as Land Reference Case No.20 of 2000.

3. The claimant, i.e. Mr.Jasvantray Morarjibhai Acharya examined himself at Ex.31. He mentioned in his evidence that his land which was acquired was highly fertile and that he was able to raise different crops. He also asserted that he had incurred expenditure of Rs.70,000/- for constructing Well in the land and had developed a farm house on the acquired land as a result of which he was entitled to compensation of Rs.70,000/- for his Well and Rs.3,20,000/- for his farm house. What was maintained by the said witness before the Court was that the acquisition was made in such a manner that the land admeasuring 3 Acres and 8 Gunthas had become totally useless and therefore, he was also entitled to 33% as severance charges on the compensation found payable to him. According to him, he had initiated proceedings for converting his agricultural land into non agricultural land

and in view of the potentiality of the land for being used for non agricultural purpose, he was entitled to compensation at the rate of Rs.100/- per sq.mt. In support of his claim for enhanced compensation, the said witness produced three sale-deeds for consideration of the Court at Ex.26, Ex.28 and Ex.29.

He was cross-examined by the appellant but nothing substantial could be elicited.

4. On behalf of the appellant, Mr.Pravinbhai Popatlal Patel, Special Land Acquisition Officer & Deputy Collector, was examined at Ex.36. According to him, before determining the amount of compensation payable to the claimant, he had taken into consideration the price of lands prevailing in the vicinity of the land acquired in the instant case.

On behalf of the acquiring authority, witness Ghanshyambhai J.Ray was examined at Ex.42. He produced 17 sale-deeds at Exs.44 to 55, and Exs.57 to 61 for consideration of the Court. According to him, the Special Land Acquisition Officer had determined just amount of

compensation payable to the claimants and the claimants were not entitled to enhanced compensation

5. On appreciation of evidence adduced by the parties, the Reference court was of the opinion that three sale-deeds, which were produced by the claimant at Ex.26, 28 and 29, were relevant for the purpose of determining the market value of the land acquired in the instant case. After ascertaining the price indicated in those sale-deeds and making appropriate deductions, the Reference Court was of the opinion that the claimant was entitled to compensation at the rate of Rs.29/- per sq.mt. The learned Judge was also of the opinion that the claimant was entitled to compensation for Well, farm house and also to severance charges. Thus, by the impugned award, the Reference Court has awarded compensation to the claimant at the rate of Rs.29/- per sq.mt. as well as compensation for Well as well as for farm house and also severance charges, giving rise to the instant Appeal.

6. This Court has heard Mr.L.R.Poojari, learned

Assistant Government Pleader for the appellant and Mr.D.C.Sejpal, learned counsel for the claimants at length and in great detail. This Court has also considered th paper-book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. It is well settled that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) of the Act and the methods of valuation may be; (i) opinion of expert, (ii) the prices paid within a reasonable time in bonafide transactions of purchase and sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages, and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence

of comparable sales or other evidence for computation of the market value.

8. In the instant case, evidence of comparable sales has been produced by the parties before the Reference Court and therefore it would be advantageous if the particulars of the sale-deeds are tabularised for the purpose of ascertaining the market value of the lands acquired in the instant case.

Particulars of documents produced by the claimants for consideration of the Court:

Ex. No.	Survey No.	Area	Date of sale-deed	Rate per sq.mt.	Distance (meters)
26	1629	1017.75	15.7.1992	32.5	10
28	1405/1-2	190	15.12.1992	52.63	500
29	1405/11-12	213.20	12.11.1993	51.49	500

Particulars of documents produced by the acquiring authorities for consideration of the Court:

Ex. No	Survey No.	Area Sq. Mt.	Date of sale-deed	Rate per sq.mt.	Distance (aprox.)
44	1232	12423	1.6.1993	1.30	4 Kms.
45	1289	25600	23.3.1993	1.20	4 Kms.
46	1266	36000	20.1.1994	1.4	4.5 Kms.
47	1304	12500	27.11.1992	1.2	3 Kms.
48	1318	9800	3.6.1991	1.15	4 Kms.
49	1330	9500	21.6.1993	1.26	3 Kms.
50	1336	13000	12.11.1993	1.53	2.5 Kms.
51	1476	1300	16.10.1991	1.92	1.5 Kms.

Ex. No	Survey No.	Area Sq. Mt.	Date of sale-deed	Rate per sq.mt.	Distance (aprox.)
52	1429	2500	2.4.1990	1.2	500 mtrs.
53	1603	12000	22.4.1992	1.25	350 mtrs.
54	1620	12200	13.4.1990	2.8	250 mtrs.
55	1789	8100	13.10.1993	1.24	450 mtrs.
57	2575	13000	22.3.1991	1.16	2.5 Kms.
58	2588	7700	9.3.1994	2.59	2.5 Kms.
59	2525	7300	5.12.1992	2.73	750 mtrs.
60	2303	10800	28.4.1993	1.85	2 Kms.
61	2300	15500	28.4.1993	1.87	2 Kms.

9. Having regard to the principle laid down by the Supreme Court in *Administrator General of West Bengal v. Collector, Varanasi - AIR 1988 SC 943*, that the prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of preliminary notification are the usual and indeed, the best evidences, for determining the market value of the land, the learned advocates for the parties have agreed and state before the Court that Ex.26, which is the sale-deed relating to Survey No.1629 dated July 15, 1992, is the only sale-deed relevant for the purpose of determining the market value of the land acquired in the instant case

because the other sale-deeds relate to the lands situated away from the land acquired in the instant case and the dates of those sale-deeds are also not proximate in time to the notification issued under Section 4(1) of the Act in the instant case for acquiring the land belonging to the respondents. In view of the statement made by the learned advocates for the parties at the Bar, this court proposes to consider the evidenciary value of Ex.26 for determining the market value of the lands acquired in the instant case. Exhibit 26, which is on running page No.127 of the paper-book supplied by the learned counsel for the claimants, relates to sale of Survey No.1629. It indicates that the said Survey Number admeasured 1017.15 sq.mts. It was owned by Ms.Savitaben Gordhanbhai Patel and Ms.Dhaniben Malubhai Gohil. The said Survey Number was sold to Mr.Shantilal Raijibhai Patel, who was the partner of M/s.Mina Ultra-Marine Corporation for a sum of Rs.33,000/-. It means that Survey No.1629 of village Halvad was sold on July 15, 1992 at the rate of Rs.32.50 ps. per sq.mt. The evidence on record shows that said Survey

Number is situated only at a distance of 10 meters from the land acquired in the instant case. However, there is no manner of doubt that Survey No.1629 was a non-agricultural piece of land whereas in the instant case, what was acquired was an agricultural land. Under the circumstances, for the purpose of determining the market value of the land acquired in the instant case, 1/3rd amount will have to be deducted from the price indicated from the sale of Survey No.1629 on July 15, 1992. If 1/3rd amount is deducted from the rate of Rs.32.50 ps. per sq.mt. at which Survey No.1629 was sold, the rate would come to Rs.21.40 ps. per sq.mt. It may be mentioned that the said Survey Number was sold on July 15, 1992, whereas in the instant case, notification for acquiring the land in question was published in the official gazette on September 14, 1993 and in view of the time gap between the two documents, the respondents would be entitled to rise in price of their land at the rate of 10% p.a. Meaning thereby, the respondents would be entitled to compensation at the rate of Rs.23.54 ps. per sq.mt., which figure is

rounded of to Rs.23/- per sq.mt. for convenience. Thus, this Court is of the opinion that the respondents would be entitled to compensation at the rate of Rs.23/- per sq.mt. and not at the rate of Rs.29/- per sq.mt. as held by the Reference Court.

10. Further, it is well settled that when the compensation of the land acquired has been assessed on the basis that it is an irrigated land, it includes the price of Well also. Therefore, this Court is of the opinion that no separate compensation could have been ordered to be paid to the claimants for Well situated in the land belonging to them. So also, on the same principle, the claimants would not be entitled to compensation for the farm house constructed by them on the acquired land. Thus, the compensation awarded by the Reference Court for Well and farm house will have to be set aside. However, it is clarified that in view of the clear and specific evidence led by the deceased-claimant that a part of the land had become useless because of the acquisition of his land, the respondents would be entitled to

severance charges. Therefore, the finding recorded by the Reference Court that the claimants would be entitled to severance charges at the rate of 33% on the amount of compensation found payable to them is hereby confirmed.

11. For the foregoing reasons, the Appeal partly succeeds. The Judgment and award dated April 25, 2005, rendered by the learned Joint Civil Judge (S.D.), Dhrangadhra, in Land Reference Case No.20 of 2000, awarding compensation to the claimants at the rate of Rs.29/- per sq.mt. is hereby set aside and it is held that in all, the claimants would be entitled to compensation at the rate of Rs.23/- per sq.mt. for their acquired land. The amount of compensation awarded by the Reference Court for Well and farm house is hereby set aside. It is held that the respondents would be entitled to 33% amount as severance charges on the amount of compensation found payable to them by this Court. The other directions contained in the impugned judgment are not interfered with at all and are hereby confirmed. The Appeal is

partly allowed accordingly. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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